IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

FRIDAY, THE 14TH SEPTEMBER 2007 / 23RD BHADRA 1929

Crl.Rev.Pet.No. 3341 of 2007()

CC.22/2000 of ADDL. CHIEF JUDICIAL MAGISTRATE COURT, TRIVANDRUM

.....

REVN. PETITIONER:

---

1. GOPALAKRISHNAN,AGED ABOUT 61,
RETIRED AS ADDL.DIRECTOR,PUBLIC RELATIONS DEPT,
THIRUVANANTHAPURAM NOW RESIDING AT USHA MANDIRAM,
KAZHAKOOTTAM,THIRUVANANTHAPURAM DISTRICT.

2. SMT.USHA GOPALAKRISHNAN,AGED ABOUT 52,
W/O.GOPALAKRISHNAN,NOW RESIDING AT USHA MANDIRAM,
KAZHAKOOTTAM,THIRUVANANTHAPURAM DISTRICT.

BY ADV. SRI.M.H.HANIL KUMAR
SRI.SANU S.PANICKER

RESPONDENTS:

---

1. VIJAYAKUMARI,W/O.LATE D.SAHADEVAN,
KUZHIVILAKKAKATHU HOUSE,ORUMATHILKOTTA,
ANAYARA P.O,THIRUVANANTHAPURAM -20.

2. STATE OF KERALA REPRESENTED BY THE
PUBLIC PROSECUTOR,HIGH COURT OF KERALA,ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. K.S. SIVAKUMAR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 14-09-2007 THE COURT ON 14/09/2007 PASSED THE FOLLOWING:

V. RAMKUMAR, J.

.....

Crl. R.P. No.3341 of 2007

.....

Dated, this the 14th day of September 2007

O R D E R

Petitioners are accused Nos. 1 and 2 in C.C. 22 of 2000 on the file of the Addl.Chief Judicial Magistrate, Thiruvananthapuram. They challenge Annexure A4 order dated 2-06-2007 passed by the Addl.Chief Judl.Magistrate framing charge against them for an offence punishable under Sec. 420 read with Sec. 34 I.P.C.

2. The case of the complainant in Annexure A1 private complaint is that the first accused purchased marble from the complainant on credit for a sum of Rs. 2,56,687/- in the year 1999 promising to pay the price within three months . But he did not pay the price in spite of repeated demands. The marble was purchased by the first accused who was the Addl. Director of Public Relations Department and the 2nd accused was the Librarian of Kerala University for the purpose of completing the comstruction of a motel at Thiruvanantahpuram.

3. The learned counsel for the revision petitioner submitted that a reading of the averments in the complaint as well as the evidence of the complainant examined as P.W.1 whose deposition is produced as Annexure A3 will show that the case at best would amount only to a breach of promise and that the complaint under Sec. 420 I.P.C. will not lie. He also relied on

Prabhat Kumar Hose v. Tarun Kanti and another – AIR 1994 SC 960 in support of his submission. He further submitted that the complainant had not produced any bill or other documentary evidence along with the complaint to prima facie make out a case of proceeding against the accused.

4. I am afraid that I cannot agree with the above submission. It is too early to consider the above contention of the petitioner. The court below, after perusing all the records and after considering the evidence of P.W.1 the complainant and the evidence of the headload worker who had loaded the marble on behalf of the complainant has chosen to frame charge. It was on being satisfied that there was ground for presuming that the accused have committed the offence. As for the alleged non-prosecution of documents evidencing the purchase of marble by the accused, the complainant's case is that her deceased husband was doing the marble business and it was from him that the accused purchased marble, that on the death of her husband the business has been stopped, that the accused were inducing the complainants husband to part with the marble on credit and that while the license was surrendered at the sales tax office, the counterfoils of the bills evidencing the purchase of marble by the accused were also surrendered. There is no reason why the petitioners should not stand trial by proceeding further. I am not inclined to quash the charge framed by the court below in exercise of the discretion of the power of the revisional jurisdiction.

This revision is accordingly dismissed.

V. RAMKUMAR, JUDGE

Communicate a copy of this order to the court below.

ani.